HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1328 (M/S) of 2004

Rajeshwar Prasad S/o Sri Babu Ram
Resident of Ward No. 5, Khatima,
District-Udham Singh Nagar. .....Petitioner.

Vs

1. Prescribed Authority/Civil Judge,
   Junior Division, Khatima,
   District-Udham Singh Nagar.
2. Babu Ram S/o Heera Lal
   Resident of Ward No.25 (Old)
   Khatima, District – Udham Singh Nagar. .....Respondents

Sri Man Mohan Tiwari holding brief of
Sri Vijay Bhatt learned counsel for the petitioner.
Sri J.C. Belwal learned counsel for the respondent No.2.
Sri Nand Prasad learned Standing Counsel for the State.

Dated:-20-3-2006

Hon'ble B.S. Verma, J.

Heard Sri Man Mohan Tiwari holding brief of Sri Vijay Bhatt learned counsel for the petitioner, Sri J.C. Belwal learned counsel for the respondent No.2 and Sri Nand Prasad learned Standing counsel for the State.

Rejoinder Affidavit is taken on record.

By means of this writ petition the petitioner has sought for setting aside the impugned order dated 20-8-2004 passed by the Civil Judge (J.D.) Khatima, in Misc. Civil Suit No.2 of 2003 Baburam Vs. Johri Mal whereby the learned Trial court has rejected the substitution application paper No.8 (C) and allowed the application 12 (C) moved by the respondent No.2 Baburam for being substituted in place of deceased Leelawati.

The ground taken by the petitioner is that he is the adopted son of deceased Smt. Leelawati and respondent No.2 and has right to be impleaded as plaintiff in the aforesaid miscellaneous case.

On the other hand the learned counsel for the respondent No.2 Sri J.C. Belwal has vehemently submitted that the contention of the petitioner

is totally misconceived and the controversy on this point has already been resolved by the Judgment dated 13-8-1986 passed by the Munsif Khatima, District – Nainital (Now Udham Singh Nagar). The respondent No. 2. has filled counter affidavit in this writ petition and has also annexed certified copies of judgment dated 13-8-1986 as well as copy of Judgment and order dated 28-5-1988 passed by IIIrd Additional District Judge, Nainital in Civil Appeal No. 55 of 1986 Rajeshwar Prasad Vs. Leelawati (C.A.1 and C.A.2.) respectively. I have perused the Judgment dated 13-8-1986 passed by the Munsif Khatima. The learned Munsif has given categorical findings that the petitioner Rajeshwar Prasad was not the adopted son of Smt. Leelawati Devi.

Moreover, the appellate court also gave a finding to the effect that the appellant Rajeshwar Prasad has failed to prove by cogent and reliable evidence that he is that adopted son of deceased Har Prasad, the former husband of deceased Leelawati. Ultimately, the appellate court confirmed the judgment and order dated 13-8-1986 passed by Munsif Khatima vide Judgment and order dated 28-5-1988. Undisputedly, both the Judgments and orders have become final. Moreover, the procedure of Order XXII of the Code of Civil Procedure is summary in nature. The learned Civil Judge Junior Division Khatima while passing the impugned order dated 20-8-2004 has also discussed, this point in detail and has placed reliance on the findings recorded by the aforesaid two courts which has already attained finality.

In the facts and circumstances of the case and having gone through the entire material on record and having considered the submissions of the learned counsel for parties, I find that the learned Civil Judge Junior Division Khatima has not committed manifest error of law in passing the impugned Judgment.

The writ petition is devoid of merits and is hereby dismissed in limine.

(B.S. Verma, J.)

Dated: - 20-3-2006
M.K.